LIBRARY
SUPREME COURT, U.S.

Office-Supreme Court, U. S.
FILED
JUL 31 1953
HAROLD B. WILLEY, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 184

THE GENERAL PROTECTIVE COMMITTEE FOR THE HOLDERS OF OPTION WARRANTS OF THE UNITED CORPORATION,

Petitioner,

v.

THE SECURITIES AND EXCHANGE COMMISSION, THE UNITED CORPORATION, EDWARD R. DOWNING, RANDOLPH PHILLIPS, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED CORPORATION IN OPPOSITION

RICHARD JOYCE SMITH,
Attorney for THE UNITED CORPORATION,
No. 40 Wall Street,
New York 5, N. Y.

WILLIAM T. FARLEY,
BERNARD L. SANOFF,
Of Counsel.

Dated: July 30, 1953.

LIBRARY
SUPREME COURT, U.S.

REPLY BRIEF ON MERITS

No. 184

Office - Supreme Court, U. S.
FILED
DEC 1 1953
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

The General Protective Committee for the Holders of Option Warrants of The United Corporation,

Petitioner,

v.

The Securities and Exchange Commission, The United Corporation, Edward R. Downing, Randolph Phillips, and 22,081 Stockholders of The United Corporation,

Respondents.

On Writ of Certiorari to The United States Court of Appeals for the District of Columbia Circuit

REPLY BRIEF FOR THE PETITIONER

HENRY S. DRINKER,
THOMAS RRATH,
JOHN MULFORD,
117 South 17th Street,
Philadelphia 3, Pa.

M. QUINN SHAUGHNESSY,
715 Cafritz Building,
Washington 6, D. C.

Counsel for Petitioner.

PRESS OF ALLEN, LANE & SCOTT, PHILADELPHIA

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. 184

The General Protective Committee for the Holders of Option Warrants of The United Corporation,
Petitioner,

v.

The Securities and Exchange Commission, The United Corporation, Edward R. Downing, Randolph Phillips, and 23,081 Stockholders of The United Corporation,
Respondents.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

REPLY BRIEF FOR THE PETITIONER

ARGUMENT.

Neither The United Corporation nor the Securities and Exchange Commission contend that the Court below had jurisdiction to approve of the forfeiture of United's warrants. They do not oppose the reversal of the Court below on that point. The parts of their briefs which do not concur in our position are addressed to the contentions that the Court below had jurisdiction to review other portions of United's plan and the Commission order, and that such other portions are severable and and should not be remanded.

Messrs. Downing and Phillips admit (pages 23-5, 36-9 of their brief) that if the forfeiture of the warrants requires district court enforcement, which it clearly does,[1] the provision as to the warrants should be remanded for review by an enforcing district court. Most of their brief (pages 20-32) consists of an argument that the provision of the plan as to the warrants and the rest of the plan are not severable.

As pointed out on page 20 of our main brief on the merits, the only question before this Court in this case is the jurisdiction of the Court below to approve the forfeiture of the warrants. If this Court agrees that the Court below had no such jurisdiction, the portion of the order of the Court below which approved of such forfeiture should now be reversed.

Once that question is decided this case ends. It will be immaterial and unnecessary to decide whether or not the various parts of the plan and order are severable. It will also be immaterial and unnecessary to decide

---

[1] In Point Two (pages 32-5) of their brief, they contend that court enforcement is unnecessary to effect the forfeiture of the warrants. This contention is both inconsistent with the rest of their brief and contrary to the decision of the Court below, which correctly held that it could not enforce such forfeiture. Only in a district court enforcement proceeding can the required notice and opportunity for hearing be granted the warrant holders. Only that court is required by the Act to act "as a court of equity". Only that court can "mobilize the judicial authority" by taking *in rem* jurisdiction, i. e., "exclusive jurisdiction and possession of the company * * * and the assets thereof, wherever located" (as provided in Section 11(e) of the Act), and by its decree, terminate (i. e., confiscate or forfeit) the rights of the warrant holders in and to those assets.

There are many answers to the suggestion (at pages 35 and 38-9 of their brief) that in this case this Court should order the proceedings remanded to the Commission with instructions to delete the provision of the plan for district court enforcement. This suggestion is clearly without merit in the face of the express provision in Section 11(e) for district court enforcement if a company requests it. Even if the point could be raised in this Court, Messrs. Downing and Phillips have no standing to raise it in this case. They are respondents here, not petitioners, and cannot here obtain affirmative relief. Finally, the point is not within the narrow question to which the parties were limited by this Court when it granted certiorari in this case.

whether or not, if they are not severable, the Court below had jurisdiction in this case over the other features of the plan.

Respectfully submitted,

HENRY S. DRINKER,
THOMAS REATH,
JOHN MULFORD,
17 South 17th Street,
Philadelphia 3, Pa.

M. QUINN SHAUGHNESSY,
715 Cafritz Building,
Washington 6, D. C.
Counsel for Petitioner.

DECEMBER 1, 1953